

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1919

AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-12-3-2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2. (a) The remediation and closure goals, objectives, and standards for activities conducted under IC 13-22 and IC 13-23 shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.**

(b) The groundwater quality standards adopted under IC 13-18-17-5 shall allow, as appropriate, groundwater remediations to be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

SECTION 2. IC 13-14-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5. (a) A board may not adopt a rule until all of the following occur:**

- (1) The board holds a board meeting on the proposed rule.**
- (2) The department, after approval of the proposed rule by the board under subsection (c), publishes the following in the Indiana Register as provided in IC 4-22-2-24(c):**
 - (A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).**

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(B) A summary of the response of the department to all comments received at the meeting held under subdivision (1).

(C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) If a third public comment period is required under section 4.5 of this chapter, the department publishes notice of the third public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

- (1) proceed to publication under subsection (a)(2);
- (2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8 of this chapter; or
- (3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 3. IC 13-14-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. In addition to the requirements of section 8 of this chapter, the department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

- (1) The full text of the proposed rule, as most recently prepared by the department.
- (2) The written responses of the department to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

- (i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published

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in a second notice under section 4 of this chapter; ~~or and~~
(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;
for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

(3) The full text of the legislative services agency fiscal analysis if a fiscal analysis is required under IC 4-22-2-28.

SECTION 4. IC 13-15-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Except as provided in sections 2, 3, and 6 of this chapter, the commissioner shall approve or deny an application filed with the department after July 1, 1995, within the following number of days:

(1) Three hundred sixty-five (365) days for an application concerning the following:

- (A) A new hazardous waste or solid waste landfill.
- (B) A new hazardous waste or solid waste incinerator.
- (C) A major modification of a solid waste landfill.
- (D) A major modification of a solid waste incinerator.
- (E) A new hazardous waste treatment or storage facility.
- (F) A new Part B permit issued under 40 CFR 270 et seq. for an existing hazardous waste treatment or storage facility.
- (G) A Class 3 modification under 40 CFR 270.42 to a hazardous waste landfill.

(2) Two hundred seventy (270) days for an application concerning the following:

- (A) A Class 3 modification under 40 CFR 270.42 of a hazardous waste treatment or storage facility.
- (B) A major new National Pollutant Discharge Elimination System permit.

(3) One hundred eighty (180) days for an application concerning the following:

- (A) A new solid waste processing or recycling facility.
- (B) A minor new National Pollutant Discharge Elimination System **individual** permit.
- (C) A permit concerning the land application of wastewater.

(4) One hundred fifty (150) days for an application concerning a minor new National Pollutant Discharge Elimination System general permit.

~~(4)~~ (5) One hundred twenty (120) days for an application concerning the following:

- ~~(A)~~ a Class 2 modification under 40 CFR 270.42 to a

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hazardous waste facility.

~~(B) A wastewater facility or water facility construction permit.~~

~~(5)~~ **(6)** Ninety (90) days for an application concerning **the following:**

(A) A minor modification to a solid waste landfill or incinerator permit.

(B) A wastewater facility or water facility construction permit.

~~(6)~~ **(7)** The amount of time provided for in rules adopted by the air pollution control board for an application concerning the following:

(A) An air pollution construction permit that is subject to 326 IAC 2-2 and 326 IAC 2-3.

(B) An air pollution facility construction permit (other than as defined in 326 IAC 2-2).

(C) Registration of an air pollution facility.

~~(7)~~ **(8)** Sixty (60) days for an application concerning the following:

(A) A Class 1 modification under 40 CFR 270.42 requiring prior written approval, to a hazardous waste:

- (i) landfill;
- (ii) incinerator;
- (iii) treatment facility; or
- (iv) storage facility.

(B) Certification of a special waste.

~~(8)~~ Any other permit not specifically described in this section for which the application fee exceeds one hundred dollars (\$100) and for which a time frame has not been established under section 3 of this chapter.

(9) Fifty (50) days for an application concerning certification of a special waste.

SECTION 5. IC 13-15-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MAY 1, 1999 (RETROACTIVE)]: Sec. 1.

(a) Not later than fifteen (15) days after being served the notice provided by the commissioner under IC 13-15-5-3:

- (1) the permit applicant; or
- (2) any other person aggrieved by the commissioner's action;

may appeal the commissioner's action to the office of environmental adjudication and request that an environmental law judge hold an adjudicatory hearing concerning the action under IC 4-21.5-3 and IC 4-21.5-7.

(b) Notwithstanding subsection (a) and IC 4-21.5-3-7(a)(3), a



person may file an appeal of the commissioner's action in issuing an initial permit under the operating permit program under 42 U.S.C. 7661 through 7661f not later than thirty (30) days after the date the person received the notice provided under IC 13-15-5-3, for a permit issued after April 30, 1999.

SECTION 6. IC 13-15-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. Except as provided in sections 2, ~~and 4,~~ **and 5** of this chapter, the commissioner or a designated staff member may revoke or modify a permit granted by the department under environmental management laws or IC 13-7 (before its repeal) for any of the following causes:

- (1) Violation of any condition of the permit.
- (2) Failure to disclose all of the relevant facts.
- (3) Any misrepresentation made in obtaining the permit.
- (4) Changes in circumstances relating to the permit that require either a temporary or permanent reduction in the discharge of contaminants.
- (5) Any other change, situation, or activity relating to the use of a permit that, in the judgment of the department, is not consistent with the following:

- (A) The purposes of this title.
- (B) Rules adopted by one (1) of the boards.

SECTION 7. IC 13-16-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. Notwithstanding sections 1 through 5 of this chapter or any other law, a board or the department may not do any of the following:

- (1) **Except as provided in section 7 of this chapter,** change a fee established by:
 - (A) IC 13-18-20;
 - (B) IC 13-20-21; or
 - (C) IC 13-22-12.
- (2) Establish an additional fee that was not in effect on January 1, 1994, concerning the following:
 - (A) National Pollutant Discharge Elimination System programs.
 - (B) Solid waste programs.
 - (C) Hazardous waste programs.
- (3) Require payment of a fee for material used as alternate daily cover pursuant to a permit issued by the department under 329 IAC 10-20-13.

SECTION 8. IC 13-16-1-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 1999]: Sec. 7. (a) Before billing a person under IC 13-18-20, IC 13-20-21, or IC 13-22-12, the commissioner shall review the money in the environmental management permit operation fund established under IC 13-15-11 and make the following adjustments:

(1) If the balance of the fund collected under IC 13-18-20, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars (\$2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars (\$2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-18-20.

(2) If the balance of the fund collected under IC 13-20-21, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars (\$2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars (\$2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-20-21.

(3) If the balance of the fund collected under IC 13-22-12, once obligated expenditures are subtracted from the balance, exceeds two million five hundred thousand dollars (\$2,500,000) as of July 1 each year, the commissioner shall adjust the annual fee schedule to bill an amount, in the aggregate, equivalent to the fee schedule amount, less the excess over two million five hundred thousand dollars (\$2,500,000). Adjustments to the individual bills must be proportional to the applicable fee divided by the total amount required by all the applicable fees. Adjustments to the annual fees apply only to the next assessment year and then revert to the amounts established under IC 13-22-12.

(b) The appropriate board may adopt rules under IC 4-22-2



and IC 13-14-9 to adjust the amount of the fund balance at which the commissioner is required to adjust individual bills under subsection (a)(1), (a)(2), or (a)(3). However, the amount of the fund balance established by rule under this subsection may not exceed two million five hundred thousand dollars (\$2,500,000).

SECTION 9. IC 13-20-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. A person may not be required to have ~~solid~~ **special** waste certified as ~~special waste~~ **for disposal**:

- (1) for a single shipment of ~~solid~~ **special** waste if:
 - (1) ~~(A)~~ the ~~solid~~ **special** waste is generated by one (1) generator from one (1) process;
 - (2) ~~(B)~~ the quantity of ~~solid~~ **special** waste generated by the process is less than one hundred (100) kilograms per month; and
 - (3) ~~(C)~~ the quantity of ~~solid~~ **special** waste disposed of is less than one thousand (1,000) kilograms per shipment; **or**
- (2) if:
 - (A) the special waste is disposed of at a solid waste landfill cell or unit that meets or exceeds Subtitle D design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR Part 258; and
 - (B) the disposal complies with section 7 of this chapter.

SECTION 10. IC 13-20-7-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) This section applies to all persons that:

- (1) generate special waste; and
 - (2) dispose of the special waste at a solid waste landfill cell or unit described in section 1(2)(A) of this chapter.
- (b) Before a person first disposes of special waste, the person must provide the solid waste landfill with a signed notification attesting that the information on the notification is true and accurate and that:
- (1) the special waste is not hazardous waste;
 - (2) a waste determination was performed on the special waste in accordance with 40 CFR 61, 40 CFR 190 through 40 CFR 299, and 40 CFR 761;
 - (3) any special waste management requirements, including fugitive dust and heat producing waste, is identified;
 - (4) documentation that supports the waste determination will be made available, upon request, to the solid waste landfill



and the department; and

(5) the characteristics of the waste have not changed since a waste determination was performed.

(c) After a person has provided the notification described in subsection (b), the person must inform the solid waste landfill each time the person sends special waste described in the notification to the landfill for disposal.

(d) Notwithstanding subsection (b), a person described in subsection (a) may continue to dispose of special waste certified under this chapter.

SECTION 11. IC 13-20-7-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies to all persons that generate special waste.

(b) A person that generates special waste may not send the special waste to a transfer station unless the transfer station is permitted by the department to accept special waste.

SECTION 12. IC 13-28-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The privilege created by this section does not apply to criminal investigations or proceedings. Environmental audit reports are admissible in criminal investigations or proceedings.

(b) Except as provided in ~~sections~~ section 2 and 3 of this chapter, an environmental audit report:

(1) is privileged; and

(2) is not admissible as evidence in a civil ~~a criminal~~, or an administrative legal action, including enforcement actions under IC 13-30-3.

SECTION 13. IC 13-28-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A party asserting the privilege described in section 1 of this chapter has the burden of proving that the party may exercise the privilege.

(b) A party asserting the privilege described in section 1 of this chapter has the burden of establishing evidence that the person made appropriate efforts to achieve compliance as described in ~~sections~~ section 2(b) and 3(b) of this chapter if the evidence indicates that the person was in noncompliance as described in section 2(a)(2)(C) or 3(a)(2)(C) of this chapter.

(c) A party seeking disclosure of material in an environmental audit report under section 2(a)(2)(A) or 3(a)(2)(A) of this chapter has the burden of proving that the privilege is being asserted for a fraudulent purpose.



(d) A prosecuting attorney seeking disclosure under section 3(a)(2)(D) of this chapter has the burden of proving the conditions for disclosure described in section 3(a)(2)(D) of this chapter.

SECTION 14. IC 13-28-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. Upon making a determination under section 2 or 3 of this chapter, the court may compel the disclosure of only those parts of an environmental audit report that are relevant to issues in dispute in the proceeding.

SECTION 15. IC 13-28-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to ~~subsection~~ **subsections (b) and (c)**, the privilege described in section 1 of this chapter does not apply to the extent that the privilege is waived:

- (1) expressly; or
- (2) by implication;

by the owner or operator who prepared the environmental report or caused the report to be prepared.

(b) A party may submit an environmental audit report to the department as a confidential document under ~~IC 5-14-3~~ without waiving a privilege to which the party would otherwise be entitled under this chapter. A party that submits an environmental audit report to the department waives any privilege to which the party would otherwise be entitled under this chapter. If the department determines under IC 5-14-3-4(a) that part of an environmental audit report is excepted from IC 5-14-3-3, then that part of the environmental audit report may not be disclosed by a public agency unless access to the report is required by a state or federal statute or is ordered by a court as provided under IC 5-14-3-4(a).

(c) When the department or a prosecuting attorney obtains, reviews, or uses an environmental audit report in a criminal proceeding, the administrative or civil evidentiary privilege created by this chapter is not waived or eliminated for any other purpose.

SECTION 16. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The department shall maintain statistics on the use of environmental audit reports in department compliance and enforcement activities, including statistics on:

- (1) the number of times the reports are disclosed to the department;
- (2) the number and types of violations disclosed to the



department through the reports;

(3) the civil penalties collected for the violations; and

(4) the time necessary for the violations to be corrected.

The department shall report annually to the environmental quality service council on the use of environmental audit reports.

(b) The department shall propose an enforcement policy, pursuant to IC 13-14-1-11.5, that provides relief from civil penalties for a voluntary disclosure that results from an internal environmental audit. In developing this enforcement policy, the department shall consider similar policies implemented by:

(1) the United States Environmental Protection Agency; and

(2) states contiguous to Indiana.

(c) The department shall report annually to the environmental quality service council on the use and effectiveness of the enforcement policy.

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 13-28-4-3; IC 13-28-4-5.

SECTION 18. [EFFECTIVE UPON PASSAGE] (a) Before September 1, 1999, the department of environmental management shall present the enforcement policy described in IC 13-28-4-11, as added by this act, to the environmental quality service council for discussion.

(b) Before November 1, 1999, the department of environmental management shall publish the enforcement policy consistent with IC 13-14-1-11.5, as amended by this act.

(c) This SECTION expires November 2, 1999.

SECTION 19. [EFFECTIVE JULY 1, 1999] (a) The environmental quality service council shall:

(1) review the permit accountability time frames outlined in IC 13-15-4-1, as amended by this act, and 326 IAC 2-5-2; and

(2) make legislative recommendations based on the review conducted under subdivision (1), if appropriate.

(b) This section expires October 1, 1999.

SECTION 20. [EFFECTIVE UPON PASSAGE] (a) The solid waste management board shall adopt rules under IC 4-22-2 and IC 13-14-9 to make the board's rules consistent with IC 13-20-7-1, as amended by this act. This subsection expires July 1, 2001.

(b) The solid waste management board shall adopt the rules described in subsection (a) before July 1, 2000. This subsection expires July 1, 2001.

(c) A rule adopted by the solid waste management board before the effective date of this SECTION that does not comply with

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IC 13-20-7-1, as amended by this act, applies only to special waste that is disposed of at a solid waste landfill that does not meet Subtitle D design standards of the federal Resource Conservation and Recovery Act as provided in 40 CFR Part 258.

SECTION 21. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "existing source" means a source in the reinforced plastic composites fabricating industry that:

- (1) emits styrene; and
- (2) has been issued a construction permit or an operating permit by the department of environmental management.

(b) The department of environmental management shall do the following:

- (1) Before October 1, 1999, develop written policies and procedures to address changes in estimated air pollution emissions from existing sources.
- (2) Before publication under subdivision (3), make a proposed non-rule policy document available to the following for review and comment:
 - (A) The public.
 - (B) The air pollution control board.
 - (C) The environmental quality service council.
 - (D) The clean manufacturing technology institute.

(3) Not later than November 1, 1999, publish a non-rule policy document describing the policies and procedures that the department will use to make determinations on air construction and operating permits for existing sources.

(c) Before December 31, 2000, the air pollution control board shall adopt rules to establish appropriate standards for control of air pollution from new and existing sources in the reinforced plastic composites fabricating industry. The air pollution control board shall consider all available information when adopting the rules, including the following:

- (1) Available control technology.
- (2) Industry work practices.
- (3) Materials available to the industry.
- (4) Recommendations by the clean manufacturing technology institute.

(d) This SECTION expires July 1, 2001.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) Before December 1, 1999, the environmental quality service council shall submit a recommendation to the general assembly as to the circumstances in which the department of environmental

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management should allow a transition period during which a person that has applied to the department to perform an environmental investigation, remediation, or closure under IC 13-25-5 before December 31, 1999, may choose to employ:

- (1) the department's published Risk Integrated System of Closure (RISC) guidance document; or
 - (2) the rules, policies, and guidance documents in effect before the publication of the RISC guidance document;
- to perform the investigation, remediation, or closure.
- (b) This SECTION expires December 31, 1999.
- SECTION 23. An emergency is declared for this act.

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